



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	590 of 2023
Date of filing:	13.03.2023
First date of hearing:	10.05.2023
Date of decision:	13.05.2025

1. Suman Sharma w/o S. B. Sharma

R/o H No.R-2/602, Kingsbury

Apartment, Sector -61, Kundli, Sonipat -131028

2. Late Sh. S.B. Sharma through his Legal Representatives

a) Suman Sharma w/o S. B. Sharma

b) Archi Sharma D/o S. B. Sharma

c) Vibha Sharma D/o S. B. Sharma

All R/o H No.R-2/602, Kingsbury

Apartment, Sector -16, Kundli,

Sonipat -131028

.....COMPLAINANT(S)

Versus

TDI Infrastructure Ltd.

Mahindra Tower, 2A, New Delhi, India

.....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh
Chander Shekhar**

**Member
Member**

Date of Hearing: 13.05.2025

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Present: - Adv. Tarjit Singh, Ld. counsel for complainants through VC
Adv. Shubhmit Hans, Ld. Counsel for Respondent through VC

ORDER

1. Present complaint has been filed by complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottees as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS AS MENTIONED IN THE COMPLAINT

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

Sr. No	Particulars	Details
1.	Name of the project	Tuscan floors, TDI City, Kundli, Sonipat
2.	Name of the promoter	TDI Infrastructure Ltd.
3.	RERA registered or not	Un-registered

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4.	Unit No.	T-55/ Duplex
5.	Unit Area	1434 sq. ft.
6.	Date of allotment	21.02.2011
7.	Date of Builder Buyer Agreement	23.03.2011
8.	Due date of possession	23.09.2013(as per clause 30 of agreement) <u>Clause 30</u> "....if the possession of the independent floor/apartment is delayed beyond a period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then for every month of delay, the buyer shall be entitled to a fixed monthly compensation/ damages/penalty quantified @ Rs.5 per square foot of the total super area of the independent floor/apartment."
9.	Basic sale price of unit	Rs. 32,50,000/-
10.	Amount paid by the complainants	Rs. 33,88,232/-
11.	Offer of possession	No offer



B. FACTS OF THE COMPLAINT

3. Facts of the complainants are that complainants i.e. Suman Sharma and her late husband i.e. S. B. Sharma had booked a floor in the real estate project- Tuscan floors, TDI City, Kundli, Sonipat being developed by the respondent by making payment of Rs 5,00,000/- on 21.09.2010, following which allotment letter dated 21.02.2011 was issued in their favor and unit no. T-55/Duplex having area 1434 sq. ft. was allotted to them. Complainants i.e. Suman Sharma and her late husband jointly entered into builder buyer agreement with the respondent on 23.03.2011. As per clause 30 of the agreement, possession of the floor was to be made within 30 months from the date of execution of agreement, thus deemed date of delivery was on 23.09.2013. An amount of Rs 33,88,232/- stands paid against basic sale price of Rs 32,50,000/-.
4. That complainant Sh. S.B. Sharma died on 09.07.2011. During his life he had executed a registered will dated 14.06.2010 before Sub-Registrar, Sunder Nagar, Himachal Pradesh whereby he has bequeathed all his movable and immovable properties in the name of his wife only i.e. Suman Sharma, (complainant).
5. That complainants visited the offices of the respondent so many times in the past several years to know the status of her duplex floor, but all in vain.

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Finally, after so many visits, the respondent gave an annexure regarding the payments of her duplex floor No. T-55.

6. That complainant Suman Sharma, filed complaint no. 2272 of 2022 before Haryana Real Estate Regulatory Authority, Panchkula. The matter came up for hearing 31.03.2023 and the matter was disposed of with a liberty to complainant to file fresh complaint with correct facts.

C. RELIEF SOUGHT

7. Complainants in its complaint sought following reliefs :

- i. Direct the respondent to refund the hard-earned money of Rs.33,88,232/- which was extracted by the respondent fraudulently in lieu of independent floor bearing No. T-55, Tuscan City, TDI City, Kundli, Sonipat, with 24% from September, 2010.
- ii. Any other directions or order which this Hon'ble Authority may deem fit in the facts and circumstances of the case.

D. REPLY ON BEHALF OF RESPONDENT

Notice was served to the respondent on 16.03.2023, which got successfully delivered on 20.03.2023. The respondent through counsel Adv. Shubhnit Hans filed reply on 28.03.2023, pleading therein as under:

8. That due to the reputation of the respondent company, the complainants had voluntarily invested in the project of the respondent company namely- Tuscan floors, TDI Tuscan City at Kundli, Sonipat, Haryana.



9. That when the respondent commenced the construction of the said project, the RERA Act was not in existence, therefore, the respondent could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. That the provisions of RERA Act are to be applied prospectively.
10. That the agreement was executed on 23.03.2011, which is much prior from the date when the RERA Act came into existence. Accordingly, the agreement executed between the parties is binding on the buyers/allottees. complainants bound by the terms of the agreement and as such cannot withdraw its consent. The complainants educated person and have signed on each and every page of the agreement and hence, each terms is binding on the complainants
11. That captioned complaint filed by the complainants is miserably hit by the principle of delay and laches. Complainants slept over its rights for more than 10 years, therefore, at this belated state the complainants cannot be allowed to approach the Ld. Authority for any relief whatsoever. Accordingly, the captioned complaint filed by the complainants must be dismissed at this very ground alone. The captioned complaint is barred by limitation.
12. That complainants herein as investor has accordingly invested in the project of the respondent company for the sole reason of investing, earning profits



and speculative gains, therefore, the captioned complaint is liable to be dismissed in toto.

13. That unit of the complainants is near completion and the possession of the unit shall be offered soon. Therefore, the complainants cannot be allowed to withdraw from the said project of the respondent company at this stage as the same shall jeopardise the said project of the respondent.

14. That respondent vide letter dated 09.05.2014 had applied to the Director General of Town and Country Planning, Haryana for grant of occupation certificate and same is awaited. Further, it has been submitted that handing over of possession has always been tentative and subject to force majeure conditions and the complainants have been well aware about the same.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

During oral arguments learned counsel for the complainants and respondent have reiterated arguments as mentioned in their written submissions.

F. ISSUE FOR ADJUDICATION

Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT



G. a) Objection regarding execution of BBA prior to the coming into force of RERA Act, 2016

Respondent in its reply has averred that provisions of RERA Act, 2016 are not applicable on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of builder buyer agreements. After RERA Act of 2016, coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the respondent as per agreement for sale, same may be fulfilled by the respondent within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as **Madhu Sareen v/s BPTP Ltd decided on 16.07.2018**. Relevant part of the order is being reproduced below: -



"The RERA Act nowhere provides, nor can it be so construed. that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller"

Further, in the recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** it has been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects. Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder. Therefore, this Authority has complete jurisdiction to entertain the captioned complaint and objection raised by the respondent regarding maintainability of the present complaint is rejected.



G.b) Objection raised by respondent stating that complainants herein are an investor and have invested in the project of the respondent company for the sole reason of investing, earning profits and speculative gains.

Respondent has also averred that complainants are an investor and not a consumer and the RERA Act of 2016 is enacted to protect the interest of consumers of the real estate sector, thereby complainants are not entitled to file the complaint under Section 31 of the Act and the complaint is liable to be dismissed. In this regard, Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations, made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are buyers and paid total price of Rs. 33,88,232/- to the respondent towards purchase of an unit in the project of the respondent. At this stage, it is important to stress upon the



definition of term allottee under the Act, the same is reproduced below for ready reference:

"2[d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent:

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the unit application for allotment, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the respondent vide allotment letter dated 21.02.2011. The concept of investor is not defined or referred in the Act. As per the definition provided under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. **0006000000010557 titled as M/s Srushti Sangam Developers Pvt Ltd, Vs. Sarvapriya Leasing (P) Ltds. And Anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

G. c) Objection raised by respondent that the present complaint is barred by limitation



Respondent had raised objection regarding maintainability of the complaint on ground of that complaint is barred by limitation. In this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 *titled as M.P Steel Corporation v/s Commissioner of Central Excise* has held that the Limitation Act applies only to courts and not to the tribunals. Relevant para is reproduced herein:

19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

Authority observes that the Real Estate Regulation and Development Act, 2016 is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act 1963, thus, would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not Court. Therefore, in view of above objection of respondent with respect to the fact that complaint is barred by limitation is rejected.

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes:-



15. That there is no dispute between the parties with respect to the facts that a unit in respondent's project namely "Rodeo Drive" situated in Kundli, Sonipat was jointly booked by complainants i.e. Suman Sharma and her late husband S.B. Sharma on 21.09.2010. Thereafter, a unit no. T-55/Duplex having admeasuring area 1434 sq. ft. was allotted to complainants through allotment letter dated 21.02.2011. Complainants had paid a total amount of Rs. 33,88,232/- against the basic sale consideration of Rs. 32,50,000/-. Builder buyer agreement executed between parties on 23.03.2011.

16. On perusal of agreement to sell dated 23.03.2011, Authority observe that as per clause 30 of agreement respondent/developer was under an obligation to handover possession to the complainants within 30 months from the date of the execution of the agreement to sell i.e. by 23.09.2013. Relevant clause is reproduced as under:

"....if the possession of the independent floor/apartment is delayed beyond a period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then for every month of delay, the buyer shall be entitled to a fixed monthly compensation/ damages/penalty quantified @ Rs.5 per square foot of the total super area of the independent floor/apartment. The purchaser agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the independent floor/apartment."



Therefore, as per terms of agreement, possession was to be offered by 23.09.2013. However, possession has not been offered to the complainants till date, meaning thereby that respondent have failed to fulfil his part of the contract. Further, it is noted that respondent in its reply admit that occupation certificate for unit has not been received from the competent authority till date. Therefore, in the absence of occupation certificate respondent is not in a position to offer a valid offer to the complainants. Since respondent is not in a position to offer a valid offer of possession in foreseeable future, complainants who already waited for more than thirteen years does not wish to wait for a further uncertain amount of time for a valid possession. Hence complainants in terms of Section 18 of RERA Act are well within their rights to withdraw from the project on account of default on the part of respondent to deliver possession and seek refund of the paid amount.

17. Further, Hon' ble Supreme Court in the matter of *"Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and other in Civil Appeal No(s). 6745 6749 OF 2021* has been observed that in case of delay in granting possession as per agreement for sale, allottees have an unqualified right to seek refund of amount paid to the promoter along with interest. Para 25 of this judgment is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears



that the legislature has consciously provided this right of refund on demand as unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including Compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

18. The aforesaid decision of the Supreme Court settles the issue regarding the right of an aggrieved allottees such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainants wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainants. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HIRERA Rules, 2017 provides for prescribed rate of interest which is as under: The definition of term 'interest is defined under Section 2 (za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part

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thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15: Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%; Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"

19. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date, i.e., 13.05.2025 is 9.1%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.1%.

20. As per calculations made by the Accounts Branch, Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order and total amount works out to Rs. 85,54,671/- as per detail given in the table below:

Sr.no	Principal amount	Date of payment	Interest accrued till 13.05.2024
1.	34424	20.04.2017	30841
2.	500000	21.09.2010	813341

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3.	100000	01.04.2011	156829
4.	33370	11.03.2011	52547
5.	300000	11.03.2011	472404
6.	253481	01.04.2011	397533
7.	300000	06.03.2012	439469
8.	41850	06.03.2012	61306
9.	500000	11.12.2010	801025
10.	1325107	06.03.2012	1941144
	Total Principle amount = Rs.33,88,232/-		Interest=Rs.51,66,439/-
Total amount to be refunded by respondent to complainant = Rs.85,54,671/-			

21. Authority further observes that the counsel for complainant/claimant moved an application on 06.03.2024 and thereby impleaded LR(s) Ms Archi Sharma and Ms Vibha Sharma, daughters of deceased Late Shri S.B. Sharma and claimant Mrs. Suman Sharma to be the remaining LR(s) of deceased Late Shri S.B. Sharma. There is nothing on record or argued by counsel for respondent that beside the claimant and her daughters there is any other legal heir of deceased Late Shri S.B. Sharma. Ms Archi Sharma and Ms Vibha Sharma have tendered duly sworn in affidavits inter-alia admitting the fact that the testator Late Shri S.B. Sharma executed the "will" No. 219/ 2010 dated 14.06.2010 and thereby bequeathed all his moveable and immoveable properties in favour of his wife/claimant Ms



Suman Sharma. From the perusal of aforesaid will, it does not transpire that there is any other legal heir of Late Shri S.B. Sharma. Once the affected parties i.e. Ms Archi Sharma and Ms Vibha Sharma have acknowledged/admitted the genuineness of the will and have not disputed the claimant to be the sole and rightful successor of the property of the deceased, then the Authority while exercising summary power/quasi-judicial powers does not deem it appropriate to delve into the question of genuineness of the will, takes the claimant Mrs. Suman Sharma to be the sole and rightful claimant against the respondent. Needless to observe that the aforesaid observation is for the purpose of deciding the present complaint and the same shall be subject to all just legal exceptions and shall not prejudice the independent right of any other LR.

I. DIRECTIONS OF THE AUTHORITY

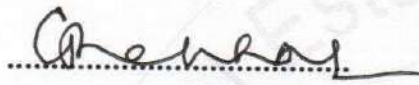
22. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:


- (i) Respondent is directed to refund the entire amount of Rs. 85,54,671 /- to Ms. Suman W/o S. B. Sharma. Interest shall be paid up till the time period provided as U/Section 2(z) of RERA Act, 2016.



- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

23. Captioned complaint is accordingly **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]